

HOUSE BILL 3024

By Campfield

AN ACT to amend Tennessee Code Annotated, Title 39,
Chapter 12, relative to immigration.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 12, is amended by adding Sections 2 through 3 as a new part thereto.

SECTION 2.

(a) No person, through employment of three (3) or more illegal immigrants in a calendar year, shall knowingly acquire or maintain, directly or indirectly, an interest in or control of any enterprise of real or personal property. No person shall knowingly receive or benefit from the proceeds of the employment of three (3) or more illegal immigrants in a calendar year. A violation of this section is a Class A misdemeanor.

(b) Any person who has knowingly received any proceeds derived, directly or indirectly, from the employment of three (3) or more illegal immigrants in a calendar year to use or invest, whether directly or indirectly, any part of the proceeds or the proceeds derived from the use or investment thereof, in the acquisition of any title to or any right, interest, or equity in, real or personal property or in the establishment or operation of any enterprise shall be subject to the provisions of this section.

(c) Any circuit or chancery court may, after making due provision for the rights of innocent persons, in compliance with the Tennessee Rules of Civil Procedure, enjoin violations of the provisions of this section by issuing appropriate orders and judgments, including, but not limited to:

(1) Ordering a defendant to divest of any interest in any enterprise,
including real property;

(2) Imposing reasonable restrictions upon the future activities or investments of a defendant, including, but not limited to, prohibiting the defendant from engaging in the same type of endeavor as the enterprise in which the defendant was engaged in violation of the provisions of this part;

(3) Ordering the dissolution or reorganization of any enterprise;

(4) Ordering the suspension or revocation of a license, permit or prior approval guaranteed to any enterprise by any agency of the state; and

(5) Ordering the forfeiture of the charter of a corporation organized under the laws of the state, or the revocation of a certificate authorizing a foreign corporation to conduct business within the state, upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of this part and that, for the prevention of future criminal activity, the public interest requires the charter of the corporation forfeited and the corporation dissolved or the certificate revoked.

(d) All property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through knowingly, employing three (3) or more illegal immigrants in a calendar year is subject to civil forfeiture to the state. No fee paid for legal, medical or accounting service shall be subject to forfeiture under the provisions of this section, unless the person or persons to whom such fee was paid had knowledge that the funds used to pay the fee were derived from activity in violation of this section. The state shall dispose of all forfeited property as soon as commercially feasible, subject to the lawful claim of any creditor. If the property is not exercisable or transferable for value by the state, the forfeiture shall expire. All forfeitures or dispositions under this section shall be made with due provision for the rights of

innocent persons. The proceeds realized from forfeiture and disposition shall be promptly deposited in the criminal injuries compensation fund established by Section 40-24-107.

(e) Property subject to forfeiture under this section may be seized by a law enforcement officer upon court process. Seizure without process may be made, if:

(1) The seizure is incident to a lawful arrest or search or any inspection under an administrative inspection warrant; or

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding based upon this section.

(f) If a seizure occurs under subsection (e), a forfeiture proceeding shall be instituted promptly. Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the law enforcement officer making the seizure, subject only to the order of the court. When property is seized under this section, pending forfeiture and final disposition, the law enforcement officer may:

(1) Place the property under seal;

(2) Remove the property to a place designated by the court; or

(3) Require another agency authorized by law to take custody of the property and remove it to any appropriate location.

(g) The office of the attorney general and reporter shall institute all civil proceedings and lien notices under this part. In any action brought under this section, the circuit or chancery court shall proceed as soon as practicable to the hearing and determination.

(h) In a civil proceeding, relief shall be granted in conformity with the principles that govern the granting of injunctive relief from threatened loss or damage in other civil cases, except that no showing of special or irreparable damage to the person shall have

to be made. Pending final determination of a proceeding initiated under this section, the court may enter a temporary restraining order or a preliminary injunction, may require execution of satisfactory performance bond, or may take any other action, including the appointment of receiver, upon a showing of immediate danger or significant injury, including the possibility that any judgment for money damages might be difficult to execute or that such action is necessary to preserve the reachability of property subject to civil forfeiture. Following the entry of any order of civil forfeiture under this section, the trial court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action, including the appointment of a receiver, that the court deems proper to protect the interests of the plaintiff.

(i) Notwithstanding any other provision of law, a civil action or proceeding under this part may be commenced at any time within five (5) years after the conduct in violation of the provisions of this part terminates or the cause of action accrues. If a civil action or other proceeding is brought, or intervened in, to punish, prevent or restrain any violation of the provisions of this part, the running of the period of limitations prescribed by this section with respect to any cause of action arising under subsection (d) that is based in whole or in part upon any matter complained of in any such proceeding shall be suspended during the pendency of the proceeding and for two (2) years following its termination.

(j) The application of one (1) civil remedy under any provision of this part shall not preclude the application of any other remedy, civil or criminal, under this part or any other provision of law. Civil remedies under this part are supplemental and not mutually exclusive.

(k) It is an element of the burden of proof in the final resolution of any civil proceeding instituted pursuant to this section that the defendant committed the requisite predicate acts.

(l) In any action in which the plaintiff substantially prevails, including preliminary proceedings under subsection (f), the plaintiff shall also recover reasonable attorney's fees in the trial and appellate courts and costs of investigation and litigation reasonably incurred.

(m) Personal service of any process in an action under this section may be made upon any person outside the state, if the person was a principal in any conduct constituting a violation of this part in this state. The person is deemed to have thereby submitted to the jurisdiction of the courts of this state for the purposes of this section.

(n) Forfeited property shall be titled in the name of the state of Tennessee and shall be disposed of in accordance with the terms of this subsection (n). The office of the attorney general and reporter may contract for property management services, including, but not limited to, the collection, securing, safekeeping, repair and disposition of property forfeited or seized. The state shall self-insure forfeited and seized property, both realty and personalty, pursuant to title 12, chapter 3, part 9. Liability claims against the state relative to forfeited and seized property shall be presented to the claims commission in accordance with its governing sections and rules.

SECTION 3.

(a) Upon the institution of any civil or criminal proceeding, the investigative agency, then or at any time during the pendency of the proceeding, may file a lien notice in the official records of any one (1) or more counties. No filing fee or other charge is required as a condition for filing the lien notice, and the clerk of the court shall, upon the

presentation of a lien notice pursuant to this act, immediately record it in the official records.

(b) The lien notice shall be signed by the attorney general and reporter or the attorney general and reporter's designee. The notice shall be in such form as the attorney general and reporter prescribes and shall set forth the following information:

(1) The name of the person against whom the civil or criminal proceeding has been brought. In its discretion, the investigative agency may also name in the lien notice any other aliases, names, or fictitious names under which the person may be known and any corporation, partnership, or other entity that is either controlled or entirely owned by the person;

(2) Known to the investigative agency, the present residence and business addresses of the person named in the lien notice and of other names set forth in the lien notice;

(3) Reference to the civil or criminal proceeding, stating:

(A) That a proceeding under this part has been brought against the person named in the lien notice;

(B) The name of the county or counties in which the proceeding has been brought; and

(C) If known to the investigative agency at the time of filing the lien notice, the case number of the proceeding;

(D) A statement that the notice is being filed pursuant to this part; and

(4)

(A) The name and address of the investigative agency filing lien notice and the name of the individual signing the lien notice.

(B) A lien notice shall apply only to one (1) person and, to the extent applicable, any other aliases, names or fictitious names, including names of corporations, partnerships, or other entities, to the extent permitted in subdivision (b)(1).

(C) A separate lien notice shall be filed for each person against whom the investigative agency desires to file a lien notice under this section.

(c) The investigative agency shall, as soon as practicable after the filing of each lien notice, furnish to the person named in the notice either a copy of the recorded notice or a copy of the notice with a notation on the notice of the county or counties in which the notice has been recorded. The failure of the investigative agency to furnish a copy of the notice under this subsection (c) shall not invalidate or otherwise affect the notice.

(d)

(1) The filing of a lien notice creates, from the time of its filing, a lien in favor of the state on the following property of the person named in the notice and against any other names set forth in the notice:

(A) Any real or personal property situated in the county where the notice is filed then or thereafter owned by the person or under any of the names; and

(B) Any beneficial interest in real or personal property situated in the county where the notice is filed then or thereafter owned by the person or under any other names.

(2) The lien shall commence and attach as of the time of filing of the lien notice and shall continue until expiration, termination, or release of the notice pursuant to Section 39-12-208. The lien created in favor of the state shall be

superior and prior to the interest of any other person in the real or personal property or beneficial interest, if the interest is acquired subsequent to the filing of the notice.

(e) In conjunction with any civil proceeding:

(1) The investigative agency may file a lis pendens in any county without prior court order; in such case, any person acquiring an interest in the subject real property or beneficial interest, if the real property or beneficial interest is acquired subsequent to the filing of lis pendens, shall take the interest subject to the civil proceeding and any subsequent judgment of forfeiture; and

(2) If a lien notice has been filed, the investigative agency may name as defendant, in addition to the person named in the notice, any person acquiring an interest in the real or personal property or beneficial interest subsequent to the filing of the notice. If a judgment of forfeiture is entered in the proceeding in favor of the state, the interest of any person in the property that was acquired subsequent to the filing of the notice shall be subject to the notice and judgment of forfeiture.

(f)

(1) A trustee who acquires actual knowledge that a lien notice or a civil proceeding or criminal proceeding has been filed against any person for whom the trustee holds legal or record title to real or personal property shall immediately furnish to the investigative agency the following:

(A) The name and address of the person, as known to the trustee;

(B) The name and address, as known to the trustee, of each other person for whose benefit the trustee holds title to the real or personal property; and

(C) If requested by the investigative agency, a copy of the trust agreement or other instrument pursuant to which the trustee holds legal or record title to the real or personal property.

(2) Any trustee who fails to comply with the provisions of this subsection (f) commits a Class A misdemeanor.

(g)

(1) Any trustee who conveys title to real or personal property for which, at the time of the conveyance, a lien notice naming a person who, to the actual knowledge of the trustee, holds a beneficial interest in the trust has been filed in the county where the real or personal property is situated is liable to the state for the greatest of:

(A) The amount of proceeds received directly by the person named in the lien notice;

(B) The amount of proceeds received by the trustee as a result of the conveyance and distributed to the person named in the lien notice; or

(C) The fair market value of the interest of the person named in the lien notice in the real or personal property so conveyed.

(2) However, if the trustee conveys the real or personal property and holds the proceeds that would otherwise be paid or distributed to the beneficiary or at the direction of the beneficiary or the beneficiary's designee, the trustee's liability shall not exceed the amount of the proceeds so held for so long as the proceeds are held by the trustee.

(h) The filing of a lien notice shall not constitute a lien on the record title to real or personal property as owned by the trustee, except to the extent that the trustee is named in the lien notice. The investigative agency may bring a civil proceeding in any circuit or

chancery court against the trustee to recover from the trustee the amount set forth in subsection (g), and the state shall also be entitled to recover investigative costs and attorney's fees incurred by the investigative agency.

(i) The filing of a lien notice shall not affect the use to which real or personal property or a beneficial interest owned by the person named in the lien notice may be put, or the right of the person to receive any rents, or other proceeds resulting from the use and ownership, but not the sale, of the property, until a judgment of forfeiture is entered.

(j)

(1) The provisions of this section shall not apply to any conveyance by a trustee pursuant to a court order, unless such court order is entered in an action between the trustee and beneficiary.

(2) Unless the trustee has actual knowledge that a person owning a beneficial interest in the trust is named in a lien notice or is otherwise a defendant in a civil proceeding, the provisions of this section shall not apply to:

(A) Any conveyance by the trustee required under the terms of the trust agreement, which trust agreement is a matter of public record prior to the filing of the lien notice; or

(B) Any conveyance by the trustee to all of the persons who own beneficial interests in the trust.

(k) Upon the entry of a final judgment of forfeiture in favor of the state of Tennessee, the title of the state to the forfeited property shall:

(1) In the case of real property, or a beneficial interest in the real property, relate back to the date of filing of the lien notice in the official records of the county where the real property or a beneficial interest in the real property is

located; and if no lien notice is filed, then to the date of the filing of any notice of lis pendens under subsection (e) in the official records of the county where the real property or a beneficial interest in it is located; and if no lien notice or notice of lis pendens is filed, then to the date of the recording of the final judgment of forfeiture in the official records of the county where the real property or a beneficial interest in the real property is located; and

(2) In the case of personal property, or a beneficial interest in it, relate back to the date the personal property or the beneficial interest in it was seized by the state, or the date of filing of the lien notice in the official records of the county where the personal property or a beneficial interest in the personal property is located; but if the property was not seized and no lien notice was filed, then to the date of the recording of the final judgment of forfeiture in the official records of the county where the personal property, or a beneficial interest in the personal property, is located.

(l) If real or personal property, or a beneficial interest in the real or personal property, subject to forfeiture is conveyed, alienated, disposed of, or otherwise rendered unavailable for forfeiture after the filing of the lien notice, or after the filing of a civil proceeding or criminal proceeding, whichever is earlier, the attorney general and reporter may institute an action in any circuit or chancery court against the person named in the lien notice or the defendant in the civil proceeding or criminal proceeding; and the court shall enter final judgment against the person named in the lien notice or the defendant in the civil proceeding or criminal proceeding in an amount equal to the fair market value of the property or any beneficial interest in the real or personal property, together with investigative costs and attorney's fees incurred by the

investigative agency in the action. If a civil proceeding is pending, such action shall be filed only in the court where such civil proceeding is pending.

(m) If real or personal property, or a beneficial interest in the real or personal property, subject to forfeiture is conveyed, alienated, or otherwise disposed of after the filing of the lien notice, or after the filing of a civil proceeding or criminal proceeding, whichever is earlier, the state may treat the disposal as a fraudulent and preferential conveyance.

(n) Notwithstanding any other provision of this section, any person who has perfected a security interest in real or personal property, or a beneficial interest in it, for the payment of an enforceable debt or other similar obligation prior to the filing of a lien notice or a lis pendens in reference to the property or interest may foreclose the interest as otherwise provided by law. The foreclosure of the interest shall, insofar as it is practicable, be made in such a fashion that it will not otherwise interfere with a forfeiture under this part.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. This act shall take effect July 1, 2008, the public welfare requiring it.